

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BOBBY BANKS, TIMOTHY DOGAN,
ZANGERIO DOGAN, WILLIAM FRAZIER,
ERIC GOMEZ, RICHARD PHILLIPS, ARIC
RILEY, CHRISTOPHER ROBERTS, VAN
RODEN, RICKY ROMINES, LARRY
SANDERS, EMMANUEL STALLWORTH,
SHUN THOMAS, ARTHUR VARDAMAN,
SHELDON WATTS, and MARCUS
SIMPSON,

Plaintiffs,

v.

DIRECTV, INC., DIRECTV, LLC, and
MULTIBAND CORP.,

Defendants.

Case No. 1:14-cv-00398

**DEFENDANT MULTIBAND CORP.’S MOTION TO
DISMISS FIRST AMENDED COMPLAINT AGAINST MULTIBAND**

Defendant Multiband Corp. (“Multiband”) hereby moves, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the First Amended Complaint (“FAC”) against Multiband. Plaintiffs’ First Amended Complaint should be dismissed for failure to state a plausible claim against Multiband.

First, Plaintiffs fail to allege facts sufficient to state “willful” violations of the FLSA. As such, the standard two-year FLSA statute of limitations applies, and the claims asserted against Multiband by Plaintiffs Simpson, Dogan, Frazier, Gomez, and Phillips are time-barred in whole or in part under the applicable statute of limitations, *i.e.*, to the extent they accrued more than two years before these Plaintiffs first filed any claims against Multiband.

Second, the allegations of the FAC are insufficient to support certain Plaintiffs’ minimum wage claims under the FLSA. Specifically, the FAC allegations confirm that Plaintiffs Dogan,

Gomez and Phillips were paid effective hourly rates that exceeded the minimum wage rates required under the FLSA.

Third, Plaintiffs fail to plead facts sufficient to support their claims that they were employed by Multiband. Indeed, Plaintiffs allege they were “treated as independent contractors,” there are no facts in the FAC to raise reasonable inferences that they were employees (as opposed to independent contractors) of the third party entities that (presumably) directly engaged their services, and such inferences are essential to Plaintiffs stating a plausible claim of joint employment against Multiband.

The basis for the Motion is further explained in the attached Memorandum of Law, which is incorporated herein.

Dated: April 14, 2015

Respectfully submitted,

/s/ Tammy L. Baker

Tammy L. Baker (MS Bar No. 104034)
Jackson Lewis P.C.
First Commercial Bank Building
800 Shades Creek Parkway, Suite 870
Birmingham, AL 35209
Telephone: (205)322-3106
Facsimile: (205)322-3131
Email: bakert@jacksonlewis.com

/s/ Michael Tiliakos

Michael Tiliakos (*Pro Hac Vice*)
Natalie Hrubos (*Pro Hac Vice*)
DUANE MORRIS LLP
1540 Broadway
New York, N.Y. 10036-4086
Telephone: (212) 692-1045
Facsimile: (212) 202-6231
Email: MTiliakos@duanemorris.com
Email: NFHrubos@duanemorris.com

Attorneys for Multiband Corp.

CERTIFICATE OF SERVICE

I, Tammy Baker, hereby certify that, on this date, I caused the foregoing document to be filed electronically with this Court, where it is available for viewing and downloading from the Court's ECF system, and that such electronic filing automatically generates a Notice of Electronic Filing constituting service of the filed document, upon interested parties.

/s/ Tammy L. Baker

Tammy L. Baker

Dated: April 14, 2015